

APPEAL NO. 040692
FILED MAY 11, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 8, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first (October 27, 2003, through January 22, 2004) or the second (January 23 through April 22, 2004) quarters. The claimant appealed, arguing that the evidence supported her total inability to work during the first and second quarter qualifying periods. Additionally, the claimant argues that the functional capacity evaluation (FCE) in evidence was dated eight months prior to the beginning of the relevant qualifying periods and should not be given as much weight as the medical records dated within the qualifying period. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated to the eligibility criteria of a compensable injury, impairment rating, no commutation of impairment income benefits, and that the qualifying period for the first quarter was from July 12 through October 10, 2003, and the qualifying period for the second quarter was from October 11, 2003, through January 9, 2004. At issue is the requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) that the claimant has made a good faith effort to obtain employment commensurate with her ability to work. The claimant proceeds on a basis that she had a total inability to work in the first and second quarter qualifying periods.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that the claimant has not furnished a narrative report from a doctor which specifically explains how her injury causes a total inability to work during the qualifying periods for the first and second quarters. Additionally, the hearing officer found the FCE dated October 28, and October 29, 2002, and the report of Dr. G dated June 24, 2003, constitute other records indicating that the claimant had an ability to work during the relevant qualifying periods. The Appeals Panel has noted that medical evidence from outside the qualifying period may be considered by the hearing officer, insofar as the hearing officer finds it probative of conditions in the qualifying period in issue. Texas Workers' Compensation Commission Appeal No. 030719, decided April 30, 2003. Our review of the documents presented at the hearing indicates

that there is sufficient support for the hearing officer's determination that the claimant failed to meet the requirements to make a good faith effort to obtain employment under Rule 130.102(d)(4).

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge